

**Board of Registration in Nursing  
Proposed Amendments to 244 CMR 3.05  
Process Summary**

**Background**

Board of Registration in Nursing (BRN) is created and authorized by statute to protect the health, safety and welfare of the citizens of the Commonwealth through the regulation of nursing practice and education.

Massachusetts General Law (M.G.L.) c. 112, s. 80B delineates nursing practice: involves clinical decision making and includes teaching and supervising others, and the delegation of selected activities to the unlicensed person (UP).

Promulgated by the BRN in 1994, 244 CMR 3.05: *Delegation and Supervision of Selected Nursing Activities by Licensed Nurses to Unlicensed Personnel* provides a regulatory framework to guide the Licensed Practical Nurse (LPN) and the Registered Nurse (RN) in delegating nursing activities to the UP who functions in a complementary or assistive role to the licensed nurse in care delivery. Prohibits delegation of medication administration to the UP unless authorized at G.L. c. 94C: Controlled Substances Act.

M.G.L. c. 94C: Controlled Substances Act identifies individuals who may possess/administer medications including: licensed health care providers in course of professional practice; and class of persons authorized by DPH Commissioner regulations in course of providing services (refer to DPH regulations at 105 CMR 700.00: *Implementation of M.G.L. c. 94C* and 105 CMR 210.000: *Administration of Prescription Medications in Public and Private Schools*).

**Review of 244 CMR 3.05 Currency: Drivers**

- Legislation filed beginning in 2009 to amend M.G.L. c. 94C to permit RN to delegate medication administration to UP in home care setting. Currently, 244 CMR 3.05 does not address the licensed nurse's role and responsibilities related to the delegation of medication administration to the UP.
- Growing spectrum of services to support individuals with chronic care needs (e.g., medication administration, oxygen therapy, tube feedings) who wish to receive their care in settings where there is unlikely to be 24 hour onsite licensed nurse availability (e.g., home, assisted living, hospice, adult day health) have evolved.
- Increase in inquiries received by BRN regarding RN and LPN role in training the UP to perform nursing activities (e.g. medication administration, oxygen administration) in settings that do not operate primarily for the purpose of providing nursing or medical care. In these settings (e.g. consumer-directed care), the UP is not assistive to or supervised by a licensed nurse.

**Work Conducted to Date**

**6/10/10:** BRN convened 12-member Collaborative Task Force (CTF) composed of representatives of professional organizations and state agencies to make evidence-based recommendations. To that end, the CTF conducted an environmental scan and reviewed literature, noting:

- 34 states use medication aides (MA). MA work settings include assisted living, nursing homes, adult day health, correctional facilities, schools (*Budden, 2011*);

- Massachusetts ranked 32<sup>nd</sup> in US in number of health maintenance tasks (e.g., medication administration) that can be delegated to UP providing long-term care services (*Reinhard, et al., 2011*);
- MA are capable of safely administering oral, topical and some parenteral medications (*AZ BON, 2008; Budden, 2011; Randolph, Scott-Cawiezell, 2010*);
- No evidence to suggest MA have higher medication error rates than licensed nurses (*AZ BON, 2008; Randolph, Scott-Cawiezell, 2010; Young, et al, 2008; Zimmerman, 2011*)

**2/8/12:** BRN reviewed CTF recommendations (see Attachment 1). Immediately following, BRN invited larger health care community to submit written comments related to CTF recommendations. Ten comments received by deadline.

**3/14/12:** BRN established its 244 CMR 3.05 Subcommittee (Subcommittee) to review stakeholder comments and to make recommendations to full BRN regarding 244 CMR 3.05. Composed of four current and one previous BRN members, Subcommittee met three times (5/16/12, 6/13/12, 2/13/13) in open session, identifying consensus recommendations for BRN consideration (see Attachment 2).

**12/9/15:** In conjunction with Executive Order 562, BRN approved 244 CMR 3.05 amendments which incorporated the Subcommittee's recommendations. BRN also approved creation of a new regulatory chapter containing a single set of definitions applicable to all BRN regulations resulting in the relocation of the recommended 244 CMR 3.05 definitions to the new 244 CMR 10.00.

**10/4/16:** BRN conducted public hearing on proposed amendments. BRN accepted public comments through 10/11/16.

### **Next Steps**

BRN, in open session during a regularly scheduled meeting, will review and consider all comments received during the public comment period. Further 244 CMR 3.05 amendments may be made based on this review.

### **References:**

- Arizona Board of Registration in Nursing Regulatory Journal (2008). No. 4, Fourth quarter.
- Budden, J. (2011). The safety and regulations of medication aides. *Journal of Nursing Regulation*, 2, 2: pp 4-12.
- Randolph, P.K., & Scott-Cawiezell, J. (2010). Developing a Statewide Medication Technician Pilot Program in Nursing Homes. *Journal of Gerontological Nursing*, 36, 9:36-44.
- Reinhard, S., et al (2011). Raising Expectations A State Scorecard on Long-Term Services and Supports for Older Adults, People with Physical Disabilities, and Family Caregivers. AARP, The Commonwealth Fund, and The SCAN Foundation
- Young, H. et al. (2008). Types, prevalence, and potential clinical significance of medication administration errors in assisted living. *Journal of the American Geriatrics Society*, 56, 1199–1205.
- Zimmerman, S., Love, K., Sloane, P.D., Cohen, L. W., Reed, D., Carder, P. (2011). Medication Administration Errors in Assisted Living: Scope, Characteristics, and the Importance of Staff Training for the Center for Excellence in Assisted Living-University of North Carolina Collaborative, *JAGS*, 59:1060-1068.

**ATTACHMENT 1**  
**Collaborative Task Force Recommendations to the Board of Registration in Nursing**  
**Regarding 244 CMR 3.05**  
**2/8/12**

1. Maintain current Board position:
  - a. Delegating nurse, based upon his or her nursing assessment, has final decision making authority as to what nursing activities can be safely delegated to the UP; and
  - b. Nurse delegation of medication administration is limited to, and **MUST BE CONSISTENT** with **ONLY** those conditions at M.G.L. c. 94C and its related regulations;
2. Define the terms: Administration of Medications, Board, Licensed Nurse, Nursing Activity, Nursing Assessment, Nursing Judgment, Nursing Plan of Care, Patient, Stable and Predictable;
3. Provide additional regulatory guidance related to the delegating nurse's role and responsibilities with regard to the criteria for delegation and supervision;
4. Clarify that, if the UP deviates from the nursing plan of care or other delegating nurse directive, the delegating nurse is **NOT** responsible and accountable for the outcome of care provided by the UP;
5. Create a regulatory subsection to provide guidance to the nurse who is authorized by M.G.L. c. 94C to delegate medication administration;
6. Create a regulatory subsection to address the consultative and teaching role of the licensed nurse in settings where the presence of a licensed nurse is not consistent and may not be scheduled;
7. Recommend to the DPH Commissioner that if the Commissioner approves any changes to the regulations governing who can administer medications, the following be included:
  - a. Literacy
  - b. Standardized training
  - c. Psychometrically sound and legally defensible initial and continued competency measures;
  - d. Certification; and
  - e. Registration with an appropriate agency charged with oversight and enforcement;
8. Invite additional stakeholder comments regarding the CTF findings and recommendations for BRN consideration.

## ATTACHMENT 2

### BRN Subcommittee Consensus Recommendations Regarding 244 CMR 3.05 Amendment<sup>1</sup>

1. Revise the CTF-proposed definition of Administration of Medications to mean removal of a dose from a previously dispensed properly labeled container, verifying the label **information as current and consistent** with the prescriber's order, giving the prescribed dose to the intended patient at the appropriate time by the correct route, and promptly recording pertinent data as appropriate.
2. Revise the CTF-proposed definition of Unlicensed Person (UP) to mean, regardless of title, a responsible person who has **verifiable documented ongoing competencies** and who functions in a complementary or assistive role to the nurse in providing direct patient care or carrying out common nursing activities and is employed by an entity other than the patient.
3. Re-order the CTF-proposed language at 244 CMR 3.05 (2)(a) to read: **In the event the qualified unlicensed person deviates from the delegating nurse's instruction, nursing plan of care or other delegating nurse directive**, the delegating nurse does not bear responsibility and accountability for the outcome of the delegated activity performed by the unlicensed person.
4. Revise CTF-proposed language at 244 CMR 3.05 (2)(f) to read: The unlicensed person must have on file within the employing agency current documentation of the unlicensed person's competencies for the proper performance of each of the nursing activities identified within the unlicensed person's job description. Such documentation must demonstrate that the unlicensed person's competence for each nursing activity has been periodically validated; and that an administratively designated nurse has communicated the unlicensed person's job functions and competencies to the nurse(s) who will be delegating nursing activities to the unlicensed person. **Uniform training and certification of unlicensed personnel may be used as a basis to presume baseline competencies.**
5. Add CMR 3.05 (2)(j) to read: The delegating nurse can determine at any time that the nursing activity can no longer be delegated based on a change in the health status of the patient, in the unlicensed person's performance of the activity, or other reason the delegating nurse determines may jeopardize patient health or safety.
6. Revise CTF-proposed language at 244 CMR 3.05(4)(d) to read: Administration of medications as permitted in MGL c. 94C. In addition to complying with 244 CMR 3.05(2)(a) through (h) and (3)(a) through (e), **any nurse delegation of medication administration to an unlicensed person must be authorized in M.G.L. c. 94C, 105 CMR 700.000: Implementation of M.G.L. 94C and/or 105 CMR 210.000: The Administration of Prescription Medications in Public and Private School.**
7. Recommend that the DPH Commissioner consider the following requirements when approving rules and regulations governing medication administration:
  - a. literacy;
  - b. standardized training;
  - c. use of psychometrically sound and legally defensible initial and continued competency measures;
  - d. certification; and
  - e. registration with an appropriate agency charged with enforcement.
8. Eliminate CTF-proposed language at 244 CMR 3.07: *Responsibilities of the Licensed Nurse in Training Caregivers in Settings Where Healthcare is Incidental*. Instead, issue an advisory ruling related to 244 CMR 3.02 and 3.04, incorporating the CTF proposed concepts related to the licensed nurse teaching an unlicensed consumer-directed caregiver (i.e. caregiver does not function in a complementary role

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<sup>1</sup> Bolded text represents Subcommittee-recommended addition to the definition.

to the nurse in the delivery of nursing services and is employed by the consumer). The AR would specify that the licensed nurse can teach the unlicensed care giver who is employed by a consumer and who does not function in an assistive role to the nurse. For the purpose of the AR, teaching would not constitute delegation.

9. Issue Advisory Ruling: *Teaching Consumer-Directed Caregivers* to guide the practice of the RN and LPN when teaching nursing activities to consumer-directed caregivers and to specify that it is the Board's position that:
- a. For the purpose of this advisory ruling, "consumer directed care giver" means, regardless of the title, the unlicensed person who:
    - i. is employed by the consumer or the consumer's appointed representative (consumer representative), or provides gratuitous care to the consumer at the request of the consumer;
    - ii. while providing care, has no contractual agreement with an employing agency or is an adult directed, authorized and entrusted to care for a child by parental or other legal consent;
    - iii. acts at the direction of the consumer or the consumer representative in the performance and evaluation of selected nursing activities and therefore is not accountable to the licensed nurse;
    - iv. demonstrates a willingness to perform the nursing activity; and
    - v. functions in a setting where there is no expectation that the licensed nurse will, on an ongoing basis, supervise the performance of the nursing activity or evaluate its outcome.
  - b. the licensed nurse can teach the unlicensed consumer-directed caregiver to perform selected nursing activities;
  - c. for the purpose of the advisory, such teaching does not constitute delegation; and
  - d. the licensed nurse is responsible and accountable for his or her nursing judgments, actions and competence related to teaching the consumer-directed caregiver but would not bear responsibility and accountability for the outcome of nursing activities performed by the consumer-directed caregiver.